

**IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE**

In re: Jacobson-Alti
Examiner: Mercier
Group Art Unit: 1615
Application Serial Number: 10/718,213
Filing Date: November 20, 2003

RESPONSE TO OFFICE ACTION

Box 1450
Director of Patents
Arlington VA 22313-1450

Dear Sir:

This is in response to the Office Action May 23, 2006, in the above referenced application. The Office Action has set a shortened statutory period for reply of one-month from the date of mailing. This response is timely filed within the reply period.

In the Office Action of May 23, 2006, the Examiner has issued a restriction requirement under 35 USC 121.

Applicant does not believe the groups classified by the Examiner are patentably distinct from each other. However, for the sake of expediting prosecution of the application, applicant elects, with traverse, to prosecute the claims of Group II, which comprise claims 2 and 7-10 as originally filed.

Applicant reserves the right to prosecute the claims of Groups I, III, and IV in a later application.

Further, the Examiner has requested election of specific species in each genus of alkyl esters and bodying agents.

Applicant does not believe this requirement is proper.

The MPEP provides in §808.01(a):

Where there is no disclosure of a relationship between species (see MPEP § 806.04(b)), they are independent inventions. A requirement for restriction is permissible if there is a patentable difference between the species as claimed and there would be a serious burden on the examiner if restriction is not required. See MPEP § 803 and § 808.02.

Applicable rule further provides:

An allowable generic claim may link a reasonable number of species embraced thereby. 37 CFR 1.141

In the present application, there is a disclosed a relationship between species. Each of isopropyl myristate and isopropyl palmitate are alkyl esters. Although they have different chemical structures, as characterized by the Office Action, they still fall into a known recognizable class of compounds. Thus applicant asserts the requirement

to disclose the relationship has been met and the species election is improper.

The disclosed bodying agents of ozokerite wax, petrolatum and polybutene perform a similar function in respective formulations and thus their relationship has been disclosed as required by applicable rules of practice.

Applicant asserts the disclosure of the genus and the species therein has satisfied the relationship requirement and conforms with the requirements of current patent practice. Applicant further asserts claims are to "a reasonable number of species" as required by applicable rule (see 37 CFR § 1.141 supra.) Therefore, applicant respectfully asserts a limitation requirement of specific species within the genus is improper.

Although applicant believes the species election to be improper, in order to comply with the requirements of the instant Office Action, applicant provisionally elects, at this time, isopropyl myristate as the elected species of alkyl esters and petrolatum as the elected species of the bodying agents.

Please proceed with examining this application according to this election.

Should the Examiner require any further clarification,
please contact the undersigned attorney of record in this
case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Schwartz', is written over a horizontal line.

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